
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ET Docket No. 04-35

In the Matter of

**New Part 4 of the Commission's Rules
Concerning Disruptions to Communications**

Reply Comments of Cingular Wireless LLC

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Cingular Wireless LLC (Cingular), through undersigned counsel, submit these reply comments in the captioned proceeding in accordance with the Notice of Proposed Rulemaking (Notice) released February 23, 2004.

I. Introduction and Summary.

The Commission's proposal to modify and expand the mandatory reporting requirements for wireline carriers and to extend mandatory reporting requirements to wireless and satellite carriers was strongly opposed by the overwhelming majority of commenting parties. Only a handful of commenters, primarily state regulators, endorsed the Commission's proposals.¹ Conspicuously absent from those parties' comments was any analysis of the burden that the proposed rules would impose on the industry or any discussion of the national security concerns that mandatory reporting creates. Nor did the supporting comments demonstrate the existence of concrete benefits that would flow from mandatory reporting. The anemic claim of benefits consisted of the assertion that mandatory reporting is necessary to facilitate the work of NRIC VII², a premise that

¹ Connecticut Department of Public Utility Control (CDPUC); Staff of the Kansas Corporation Commission (KCC Staff); City of New York, National League of Cities and National Association of Telecommunications Officers and Advisors (New York).

² New York Comments at 4. The Network Reliability and Interoperability Council VII (NRIC VII) is a federal advisory committee chartered by the Commission to study the causes of service outages and to recommend ways to reduce their number and effect on consumers.

Cingular demonstrated in its opening comments to be false.³ ATIS⁴ notes that “only a small minority of existing Best Practices can be attributed to knowledge gained from the Commission’s outage reporting requirements.”⁵ USTA⁶ estimates that less than five percent of existing best practices can be attributed to information gleaned from FCC outage reports.⁷ The claim that mandatory outage reporting is required to facilitate development of industry Best Practices has been fully refuted and must be rejected.

In addition to being unnecessary, mandatory outage reporting would jeopardize the security of critical national infrastructure. The Department of Homeland Security (DHS) comments on this subject could not be clearer:

Depending on the disruption in question, the errant disclosure to an adversary of this information concerning even a single event may present a grave risk to that infrastructure. The potential availability of all reports, across all of the platforms proposed in the Commission’s Notice, could provide a potential adversary with a virtual road map targeting network stress points and vulnerabilities and a field guide to defeating “best practices” and protective measures. The Commission’s apparent proposal to make outage reports available to the public electronically over the Internet increases this risk exponentially. Safeguarding this information—especially the location, root cause, provider and other sensitive information—should be a paramount consideration in the final rules adopted by the Commission.⁸

At a time when other federal agencies are scaling back open source data collections, the Commission’s proposal to expand public access to critical infrastructure information is particularly problematic. The Commission can achieve competitive parity by eliminating the mandatory reporting requirement for wireline carriers, and allowing

³ Cingular Comments at 4-5.

⁴ Alliance for Telecommunications Industry Solutions, on behalf of its Network Reliability Steering Committee and Technical Subcommittee T1A1 (ATIS).

⁵ ATIS Comments at 9.

⁶ The United States Telecom Association (USTA).

⁷ USTA Comments at 5.

⁸ DHS Comments at 14-15.

the voluntary data reporting process that has worked successfully for over a decade to continue.

Finally, the comments demonstrate overwhelmingly the huge burden that the proposed reporting requirements would impose on the industry and its customers. The industry has spent over a decade developing reporting criteria that facilitate the analysis of outages and the development of Best Practices. For the Commission to require the development of a whole new reporting system based on new metrics and reporting thresholds would require the entire industry to revamp its systems and would disrupt, rather than enable, the ongoing development of Best Practices. As the CDPUC noted, unnecessary reporting requirements “lead to higher carrier costs and ultimately, service prices.”⁹ The Commission should endorse the existing voluntary reporting mechanisms and resist tampering with a system that is not broken.

II. Mandatory Outage Reporting is Unnecessary.

The timing of the Commission’s proposal to extend mandatory reporting requirements to wireless and satellite carriers is curious, to say the least. The Commission’s advisory committee NRIC VI recommended the formation of the Industry Led Outage Reporting Initiative (ILORI). As noted by ATIS:

The objective of ILORI is to promote a highly reliable public communications infrastructure that addresses the needs of end users in the United States. The purpose of the initiative is to: (1) establish a network reliability monitoring capability for the nation’s public communications infrastructure; (2) provide a forum for industry experts to review outage data in a trusted environment to achieve early trend identification and capture key learnings; (3) provide public accountability in the reporting process by recognizing participating companies for their commitment and execution of the process; (4) make effective use of the data gathered from the NRIC VI Focus Group 2-Network Reliability trial and implement its recommendations for the establishment of a new outage reporting

⁹ CPUC Commenta at 4.

program; and (5) generate summary data analysis reports based on outage data voluntarily submitted by individual companies to ATIS on behalf of the NRSC.¹⁰ The scope of this initiative includes a wide range of networks, including: cable, dial-up, DSL, satellite, and wireless, as well as Internet Service Providers. In March of 2004, ILORI members decided to incorporate this initiative into the ATIS NRSC.¹¹

The Commission should give the ILORI process time to work before enacting mandatory outage reporting requirements for segments of the industry not subject to the existing reporting requirements.¹² As Commissioner Abernathy recently stated regarding the NRIC process:

Some argue that regulatory mandates are necessary, but I believe that we should always explore cooperative approaches and best practices before leaping to the conclusion that heavy-handed regulation would work better. In fact, in my experience a more cooperative model typically produces better results.¹³

By releasing the Notice when it did, the Commission calls into question its commitment to the ILORI process that the industry is attempting to implement. The Commission should heed the fact that both the recipients of outage reporting data—ATIS and DHS—and those providing the data find voluntary reporting to be sufficient. DHS' support for voluntary reporting is conditioned on a commitment by carriers to furnish complete and accurate disruption information in a consistent, timely and thorough manner.¹⁴ Cingular is committed to participating fully in the ILORI process as well as the DHS' National Coordinating Center for Telecommunications Information Sharing and Analysis Center, provided that the Commission abandons its plan to make raw outage information public.

¹⁰ Network Reliability Steering Committee (NRSC). Page 5 of ATIS Comments lists more than 50 companies and government agencies, including the Department of Homeland Security, who are participating in the ATIS NRSC, ILORI and T1A1 forums.

¹¹ ATIS Comments at 3-4.

¹² See, e.g., Lucent Comments, pointing out the many ways the ILORI process is superior to mandatory outage reporting.

¹³ *Overview of FCC Initiatives to Protect Critical Infrastructure and Homeland Security*, Remarks of FCC Commissioner Kathleen Q. Abernathy, Workshop for Interdependencies, June 7, 2004.

¹⁴ DHS Comments at 9-10.

It is ironic that the single biggest obstacle to a successful voluntary outage reporting system is the Commission's repeated threat to make the outage reports public. As DHS notes, the type of information the Commission proposes to collect, if it were owned by the federal government instead of the private sector, would be eligible for protection as classified national security information.¹⁵ As Cingular demonstrated in its opening comments in this proceeding, Congress has provided for critical infrastructure information protection for the type of network outage information sought by the Commission, but only if the information is shared *voluntarily* by the industry with the federal government.¹⁶ The Commission should do nothing that would deprive this critical information of the protection so clearly intended by Congress.

The few parties supporting mandatory outage reporting do not even mention the security concerns that mandatory reporting creates. They support extension of mandatory reporting to industry segments in the name of competitive parity.¹⁷ They urge the Commission to start down the slippery slope of heavy handed regulation of competitive and emerging competitive markets such as VOIP and public data networks.¹⁸ The problem with embarking down this slippery slope is that there is no logical stopping place, even at the boundary of the Commission's jurisdiction.¹⁹ These parties ignore the obvious alternative to achieving competitive parity—eliminating mandatory reporting by wireline carriers and relying on voluntary reporting by all carriers. As Cingular demonstrated in its opening Comments, the conditions which existed in the wireline

¹⁵ DHS Comments at 15, n. 35.

¹⁶ Cingular Comments at 8-11.

¹⁷ See, e.g., New York Comments at 10-11.

¹⁸ KCC Staff Comments at 2, New York Comments at 10-11.

¹⁹ See, e.g., Ericsson Comments at 2-4, urging the Commission to limit outage reporting responsibility to Commission licensees and questioning whether the Commission has jurisdiction to require outage reporting by unrelated third parties.

industry in the early 1990s which led the Commission to impose mandatory network outage reporting on wireline carriers no longer exist.²⁰ Carriers have more than a decade of experience with voluntary network outage reporting that has resulted in the development of hundreds of industry Best Practices. According to the USTA, less than 5 percent of those Best Practices relied on data gleaned from the Commission's mandatory outage reports.²¹ By making outage reporting voluntary for all carriers, the Commission will still receive the information it needs to fulfill its statutory duties, while at the same time making the critical infrastructure protection intended by Congress available to all carriers.

III. The Proposed Reporting Requirements are Unduly Burdensome.

In its Initial Regulatory Flexibility Act Analysis²² the Commission states that the existing reporting requirements have resulted in only about 200 outage reports per year from all reporting sources combined. It then asserts that "The proposed revisions to the threshold criteria are not expected to alter the number of outage reports filed annually to a significant degree."²³ The comments received show this statement to be totally off-base. For example, BellSouth estimates that the number of network outages reported under the proposed rules would increase by more than 1000 percent, even though there was no change in network performance. BellSouth estimates that its outage reports would increase from two or three per month to over 20 per month, again with no change in network performance.²⁴ Verizon estimates that the Commission's proposal would expand the number of reports it submits from the present 19-25 reports annually to 500 or

²⁰ Cingular Comments at 1-4.

²¹ USTA Comments at 5.

²² Notice, Appendix C.

²³ Notice, Appendix C, Section D.

²⁴ BellSouth Comments at 2-3.

more annually for Verizon alone.²⁵ Quest anticipates a “dramatic increase in reportable incidents.”²⁶ It is not just large wireline companies that will incur this burden. In their comments on the Commission’s Paperwork Reduction Act analysis, the Rural Incumbent Local Exchange Carriers note that the Commission’s proposal would extend outage reporting requirements to most of the 1,337 incumbent LECs that are too small to be subject to the existing reporting requirements, to 1,387 wireless service providers and 324 satellite communications providers who are not subject to the existing outage reporting requirements. Thus the proposed rules would extend outage reporting obligations to roughly 3,000 carriers not covered by the existing rules.²⁷

The massive increase in the reporting burden that the proposed rules will impose on carriers and their customers should be required only upon a clear showing that the benefits outweigh the burdens. As ATIS comments, the reverse may be true. Expanding the reporting requirements to insignificant outages may divert resources now spent developing industry Best Practices:

While the industry believes the proposed rules would result in a substantial expansion [of outage reports], it does not believe that this expansion would necessarily provide a better understanding for the Commission or the industry regarding these outages or relevant Best Practices. If outage reporting becomes routine and pertains to less significant incidents, the industry’s focus on developing Best Practices would be diluted. Likewise, the more time that must be spent completing outage reports for less significant incidents, the less time available for developing industry solutions.²⁸

²⁵ Verizon Comments at 2.

²⁶ Quest Comments at 4.

²⁷ Comments of the Rural Incumbent Local Exchange Carriers on the Initial Paperwork Reduction Act of 1995 Analysis at 4.

²⁸ ATIS Comments at 14.

The burden imposed by the proposed rules comes not only from the expanded scope of reporting requirements, but also from the changes proposed to the reporting thresholds and metrics. As ATIS notes:

Communications providers have spent considerable time and effort in developing processes and procedures based on the existing outage reporting thresholds over the last decade. Changes in these thresholds would certainly require the retraining of personnel and, in many cases, would require substantial capital outlays for new equipment. ATIS' members have indicated that these costs would be significant for many carriers and could require them to redirect funding from newer services. The crucial question becomes: "Is the expansion of mandatory reporting requirements worth the potential impact on providers and their customers?"²⁹

IV. Several Proposed Reporting Requirements are Fatally Flawed.

The Commission's proposed "user minutes" metric was shown in numerous comments to be fatally flawed. The search for a common metric that would apply across industry segments and technologies was Quixotic, but doomed to failure. The industry has developed the existing voluntary reporting thresholds over time and these thresholds have been effective in allowing the analysis of major outages and the development of Best Practices. There is no need for the Commission to impose a different reporting metric at this time. If, however, the Commission feels that a new metric is necessary, the industry, through NRSC/ILORI and T1A1 has proposed a performance measurement for outage reporting that is set forth on page 16 of ATIS comments.

The proposed requirement that initial outage reports be filed within 120 minutes of the outage reaching the reporting threshold was also opposed in the comments. Numerous parties noted that the many carriers who would be covered by the outage reporting requirements for the first time do not have separate resources for outage

²⁹ ATIS Comments at 15.

restoration and outage reporting. Requiring a full initial outage report within 120 minutes will prove impossible and could delay restoration of service. Nextel suggest a reasonable compromise: if the Commission insists on an initial report within 120 minutes of an outage, then that report should simply state that an outage has occurred and identify, if possible, the extent of the outage. The carrier then could file its initial outage report including root cause analysis within three days. Likewise, ATIS proposes a three step process: initial notification within 120 minutes, initial report within 72 hours, and a final report within 30 days.³⁰ This procedure would provide the Commission and DHS with timely notification to identify whether a serial attack against domestic telecommunications infrastructure was underway and an opportunity to alert the public in the event of a massive outage, but still allow carriers to focus their resources on service restoration during the critical early hours of an outage.

Several commenting parties noted that the Commission's definition of an "outage" as "a significant degradation in the ability of a customer to establish and maintain a channel of communications as a result of failure or degradation in the performance of a carrier's network" is vague.³¹ Cingular agrees that a more specific definition of an "outage" is required if the Commission is to receive a consistent level of reporting by carriers. Cingular recommends that the Commission eliminate the term "significant degradation" and instead define "outage" as the "unplanned total loss of the ability of end users to establish and maintain a channel of communications due to a failure in the performance of a service provider's/network operator's network" as recommended by NRSC/ILORI.

³⁰ ATIS Comments at 32-33 lay out this proposal in detail.

³¹³¹ See, e.g., AT&T Comments at 10, n. 7.

V. Conclusion.

The industry and the Commission have worked together for more than a decade to develop effective, efficient network outage reporting requirements. The vast majority of the resulting Best Practices were the result of voluntary contributions by the industry of data and expertise that goes far beyond what is required by the Commission's mandatory outage reporting rules. The Commission has just chartered NRIC VII and tasked it with improving security of critical telecommunications infrastructure. The industry is also working closely with DHS to insure the survivability and restorability of the communications infrastructure in the event of hostile action. These voluntary efforts are jeopardized by the stated intent in the Notice to greatly expand the mandatory outage reporting requirements and to make the resulting outage reports public. Chairman Powell recently stated that "in the post 9/11 world, security is our greatest challenge and must be our highest priority."³² It is hard to imagine a proposal more at odds with that statement than the Notice. The Commission should repeal 47 C.F.R. § 63.100 and rely on voluntary outage reporting by all carriers under the auspices of NSRC/ILORI.

Respectfully submitted,

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³² Remarks of Chairman Michael K. Powell at the NSTAC XXVII Executive Session Luncheon (May 19, 2004).

CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 24th day of June, 2004, courtesy copies of the foregoing Comments of Cingular Wireless were sent via first class mail, postage prepaid to the following:

Marlene H. Dortch, Secretary
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In addition, the document was filed electronically in the Commission's Electronic Comment Filing System on the FCC website.

s/ Lydia Byrd
Lydia Byrd